

§ 1786.154 Qualified Notes.

An eligible borrower may prepay Qualified Notes under this subpart at the discounted present value. A Qualified Note is a note evidencing an RUS electric loan, all advances of which were made prior to May 1, 1992, or not less than 2 years prior to the date of prepayment closing. See §§ 1786.155(a)(3) and 1786.158 (h) and (j).

§ 1786.155 Eligible borrower.

(a) To be eligible to prepay an electric loan under this subpart, the borrower must be in compliance with the following:

(1) The borrower shall be current on all payment obligations on outstanding loans made or guaranteed by RUS. For the purpose of determining eligibility for prepayment, a default by a power supply borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower;

(2) There shall exist no material defaults under the borrower's RUS Loan Contract and Mortgage;

(3) The borrower shall have expended all funds advanced pursuant to the RUS Loan Contract for the purposes for which such funds were advanced. A borrower will not be eligible to prepay under this subpart if it has any funds advanced pursuant to the RUS Loan Contract in its Construction Fund Account; and

(4) The borrower shall be current on all obligations under any wholesale power contract with an RUS financed power supply borrower.

(b) The eligibility of borrowers that have had any indebtedness representing loans made or guaranteed by RUS restructured shall be determined on a case by case basis considering the terms and conditions of the restructuring agreement.

§ 1786.156 Application procedure.

Any borrower seeking to prepay Qualified Notes under this subpart should apply to the appropriate RUS Regional Director or the Director of the Power Supply Division. The application shall provide the following:

- (a) Borrower's RUS designation;
- (b) Borrower's name and address;

(c) A certified copy of a resolution of the board of directors of the borrower that the borrower wishes to enter into a prepayment agreement providing for the prepayment of all or a portion of its Qualified Notes;

(d) Listing of each Qualified Note to be prepaid by loan designation, RUS account number, advance date, maturity date, original amount, and outstanding principal balance;

(e) Evidence that the borrower has the ability to obtain the financing necessary to prepay its Qualified Notes listed in paragraph (d) of this section and identification of the source of financing and the need if any of obtaining a lien accommodation from RUS; and

(f) Such additional information as the Administrator may request.

§ 1786.157 Approval of applications.

(a) Ordinarily, within 30 days of receipt, an application will be reviewed and the borrower will be notified as to whether the application has been approved. If the application has not been approved, the borrower will be informed as to the reasons. If the application is approved the borrower shall thereafter be provided with a prepayment agreement for execution.

(b) The Administrator may limit the number of applications approved and closings scheduled from time to time, taking into account, among other matters, administrative considerations of the RUS.

§ 1786.158 Terms and conditions of prepayment agreement.

Upon receipt of a satisfactory application, RUS shall provide to the borrower for its execution a prepayment agreement, in form and substance satisfactory to RUS, which may include the following:

(a) Provide for the prepayment of one or more Qualified Notes from time to time, but no more than two closings may be scheduled in any calendar year unless a third closing is for the prepayment of all outstanding electric loans of the borrower;

(b) Set forth procedures and forms through which the borrower will notify the Government of each election it makes to prepay certain Qualified

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Notes upon a requested closing date and the Government will notify the borrower of the established closing date and prepayment amount for the Qualified Notes for each closing;

(c) Reserve to the Administrator the right to reschedule closing dates to meet administrative considerations;

(d) Set forth closing requirements identifying the location and manner of payment, and all documentation and information to be delivered prior to or at closing, including opinions of counsel and certificates from the borrower;

(e) Provide for notice by either telephone or facsimile to be given by RUS to the borrower not more than 8 nor less than 3 business days before a scheduled closing date of the amount to be paid at closing which shall include all accrued interest and the discounted present value of the Qualified Notes to be prepaid;

(f) Provide for notice of the 120 month period during which the borrower's eligibility for direct or insured loans will be restricted;

(g) Set forth representations and warranties;

(h) Require the borrower to prepay each Qualified Note specified in full;

(i) Require the borrower to identify the source of the financing that will be used directly or indirectly to refinance the Qualified Notes. If the source is other than internally generated funds, the borrower must certify in writing whether such financing will be tax exempt, and if tax exempt financing will be used, furnish all information on the terms and conditions of the financing as RUS may require;

(j) Require the borrower to rescind the unadvanced balance of all outstanding electric loans as of the date of initial closing;

(k) Require the borrower, if it is a party to a wholesale power contract with a power supply borrower, to provide the Administrator with such assurances as the Administrator may require that it is in compliance with and will continue to comply with its obligation to such power supply borrower;

(l) Provide RUS, if the Administrator determines it necessary, with security for all outstanding rural development loans and amendments to any outstanding rural development loan agree-

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ments in form and substance, and on terms and conditions, satisfactory to RUS;

(m) Prescribe remedies for violating the terms and conditions of the prepayment agreement;

(n) Provide for termination by RUS of the right for the borrower to prepay thereunder;

(o) Provide evidence that any approvals required from any supplemental lender have been obtained; and

(p) Set forth such other terms and conditions as the Administrator shall deem appropriate.

§ 1786.159 Initial closing.

(a) Upon receipt of the prepayment agreement, the borrower may submit, pursuant to the terms of the prepayment agreement, a closing request which shall request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to the borrower's closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date.

§ 1786.160 Subsequent closings.

(a) Each subsequent prepayment after the initial closing shall be facilitated with the submission of an additional closing request by the borrower. Each closing request must request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to each subsequent closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date in each case.

§ 1786.161 Return of Qualified Notes and release of lien.

Upon payment to RUS at closing of the full amount specified in the notice delivered by RUS to the borrower pursuant to the terms of the prepayment agreement (see § 1786.158(e)), RUS will deliver to the borrower at closing those Qualified Notes which have been paid